IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 265 of 2005 (S/S)

Neeraj Kumar Saxena
S/o Late Sri Pooran Prasad Saxena,
serving as Assistant Teahcer, Junior Basic School,
Melaghat, Block Khatima
District- Udham Singh Nagar **……..Petitioner**

Versus

1. Additional District Education Officer (Basic)/ District Basic Education Officer, Udham Singh Nagar.
2. District Education Officer, Udham Singh Nagar
3. Assistant Director of Education (Basic), Kumaon Region, Nainital.
4. Director of Eduaction (Basic), Uttaranchal, Dehradun.
5. Sanjay Saxena S/o Late Shri Naresh Prasad Saxena presently posted as Head Master P. School Chail Beta Khatima Udham Singh Nagar

……Respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri B.S. Khanka, learned counsel for the petitioner, and learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

A. To issue a writ order or direction in the nature of mandamus commanding the respondent no. 1 to consider petitioner's claim for promotion from due date i.e. 23.11.2004 when persons junior to him were promoted.

A-1. To issue a writ, order or direction in the nature of Mandamus commanding the respondent no. 1 to give due place to the petitioner in the seniority list of Primary School Teacher after taking into account his entire length of service from the

date of initial appointment as has been done in the case of Sri Sanjay Saxena, Sri Nanak Singh etc.

B. To issue a writ, order or direction in the nature of mandamus commanding the respondent to promote the petitioner to the post of Assistant Teacher, Senior Basic School/ Head Master, Junior Basic School w.e.f. the date when juniors to him were promoted.

C. To issue a writ, order or direction in the nature of Mandamus commanding the respondents to grant all consequential benefits including different of salary, seniority etc.

D. To issue any other order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

E. Award the cost of the writ petitioner in favour of the petitioner.

The Petitioner has challenged the order dated 3rd November, 2004 passed by Additional District Education Officer (Basic) Udham Singh Nagar.

The stand of the petitioner is that he was appointed as Assistant Teacher in Untrained Grade under Dying-in-Harness Rules on 06.03.1990 and in pursuance to the G.O. No. 860/15 (13)/97-1499/8/77 dated 15th May, 1997, the petitioner was granted Trained Grade along with Sri Sanjay Saxena in the seniority list. The name of the Shri Sanjay Saxena is placed at Serial No. 23 whereas the name of the petitioner finds place at Serial No. 24. Shri Sanjay Saxena has already been promoted to the post of Head Master, however, the petitioner has not been promoted. In the order dated 3rd November, 2004, the Additional District Education Officer (Basic) Udham Singh Nagar, while justifying not to promote the petitioner to the post

of Head Master, has stated that since the petitioner was granted Trained Grade in the year 1997, he was not entitled to be promoted.

The submission of the learned counsel for the petitioner is that Sri Sanjay Saxena was also provided Trained Grade in the year 1997 and in case he can be promoted to the post of Head Master, the action of the respondent is discriminatory.

I find force in the submission of the learned counsel for the petitioner. The respondents have filed counter affidavit. However, in the counter affidavit, they have taken a stand that no person junior to the petitioner has been promoted till date on the post of Head Master. It is not disputed that Sri Sanjay Saxena in the seniority list was at Serial No. 23 whereas the petitioner is at Serial No. 24.

In the circumstances, I quash the order dated 03.04.2004 passed by the Additional District Education Officer (Basic) Udham Singh Nagar and direct the authorities concerned to consider the case of the petitioner for promotion whenever promotions are made in accordance with law and seniority.

With this direction, writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

04.04.2007
VKS